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March 11, 2005

Via Electronic and U.S. Mail

Mr. Nigel Robinson USEPA – Region II New Jersey Superfund Branch Emergency & Remedial Response Division 290 Broadway, 19th Floor New York, NY 10007-1866

RE: Chemsol Superfund Site

Wetlands Approval and Impact to Schedule

Dear Mr. Robinson:

As you know, a wetlands application was submitted in early January for the next phase of well drilling. More recently, we (primarily HydroQual) have held several following discussions with NJDEP's Land Use Regulation Program (EURP) about our submittal. They have indicated that we should submit a General Permit No. 4 (GP-4) instead of a GP-10.

The GP-10 provides for minor road crossings and a road crossing is what is necessary to install the wells. The GP-10 also establishes a threshold of a 0.25-acre disturbance of wetlands and does not require mitigation for this minimal disturbance. Our total wetlands disturbance for construction of the access roads will be 0.04 acre. The NJ land use regulations (N.J.A.C. 7:7A-4.4) also permit the use of multiple general permits, provided the total disturbance is not greater than one acre, which to date the combined previous GP-4 and our proposed GP-10 do not total more than one acre of wetlands disturbance. Finally, the conservation easement provides for an exception to the terms of the agreement for compliance with the requirements of the Consent Decree. For all of these reasons, we believe that a GP-10 is an appropriate permitting vehicle and would move the work forward as expeditiously as possible.

However, LURP is taking the position that a GP-4 permit applies, which requires preparation and approval of a mitigation plan and creation of new wetlands on a 2:1 ratio. This is frustrating because the minor disturbance that we propose is well below the GP-10 threshold, and the request for mitigation will simply delay the work, without good cause.

As noted above, we believe it is within LURP's ability to approve the GP-10, our principle basis for which is that the conservation easement that was earlier negotiated with LURP specifically states that additional work may have to be conducted in these areas to fulfill Consent Decree requirements.



Nigel Robinson March 11, 2005 Page 2

The present situation is that NJDEP will not approve our GP-10. They are requiring submittal of a GP-4 with an accompanying mitigation plan, which will likely cause a delay of more than 3 months (resubmit application, review of application, review of mitigation plan) before site preparation ahead of drilling can get underway.

I would offer that EPA has a few options for what happens next:

- 1. We can proceed as directed by LURP with the GP-4 and wetlands mitigation, thereby accepting a delay;
- 2. EPA can instruct that our proposed approach, as described in the GP-10, meets the substantive requirements of the regulations and of the conservation easement previously negotiated with the NJDEP, and we can proceed pursuant to CERCLA's exclusion for permits; or
- 3. Because this is now the third time we have had to go to LURP for wetlands approval (before the soils work and before the first well drilling were the other two), and we can expect that this exercise will now be repeated not only here, but also next time when we install extraction well piping, and maybe again in connection with OU-3, it may be most appropriate to take a more universal approach. At EPA's instruction, we could proceed with work as needed, without individual approvals at this time (i.e., we will simply retract the GP-10) and fulfill wetlands obligations at the conclusion of all remedial construction.

One point that I should make is that this situation has arisen as a result of our negotiated outcome about well placements. Specifically, it is the new monitoring wells (MW-207UP and MW-208UP) that necessitate wetlands approval. The remaining work is limited to transition areas, upland areas, or along existing access roads, and therefore, would not require a wetlands disturbance. This in not particularly germane to the current issue, but does explain why we could not have reasonably predicted this new cause of delay.

I will call you early next week after you have had a chance to consider this information, to see what EPA's determination would be in this matter.

Very truly yours,

de maximis, inc.

William J. Lee William J. Lee 1RZ Nigel Robinson March 11, 2005 Page 3

CC: Alison Saling, Esq., Kirkpatrick & Lockhart Stephen Porac, Technical Committee Chair Timothy Roeper, HydroQual

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